POLICY NOTE

THE PROVISION OF EARLY LEARNING AND CHILDCARE (SPECIFIED CHILDREN) (SCOTLAND) AMENDMENT ORDER 2015

SSI 2015/

1. The above instrument is made in exercise of the powers conferred by section 47(2)(c)(ii) and 99(1) of the Children and Young People (Scotland) Act 2014 ("the Act"). This instrument is subject to affirmative procedure.

Policy Objectives

2. The purpose of this instrument is to amend the Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014 ("the Specified Children Order") in order to specify under section 47(2)(c)(ii) of the Act further 2 year olds who will become "eligible pre-school children" and therefore entitled to the mandatory amount of early learning and childcare under section 47(1) of the Act.

3. Section 48(1) of the Act defines the mandatory amount of early learning and childcare as 600 hours in each year for which a child is an eligible pre-school child; and a pro rata amount for each part of a year for which a child is an eligible pre-school child. A year is defined as a school year, so begins in August.

4. The Scottish Government's policy is to develop a universal system of high quality early learning and childcare which is accessible and affordable for all families, focusing, in the first instance, on those who are most vulnerable or disadvantaged. Early learning and childcare improves outcomes for those children as well as removing barriers to parents seeking work or study; and creates wider opportunities for local authorities to engage and support parents with work related activity or family support.

5. Section 47(2) of the Act defines "eligible pre-school child" for the entitlement to the mandatory amount of early learning and childcare as those who are under school age[1]; have not commenced attendance at a primary school (other than a nursery class) and are either those specified further under an order made by the Scottish Ministers or the most vulnerable 2 year olds: those aged 2 or over who are (or have been at any point since turning 2) either looked after by a local authority, the subject of a kinship care order[2] or a child with a parent-appointed guardian under section 7 of the Children (Scotland) Act 1995.

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[1] "School age" is defined in section 97(3) of the Act by reference to section 135(1) of the Education (Scotland) Act 1980 (the 1980 Act); it means, subject to section 32(3) of the 1980 Act, a person who has attained the age of 5 but not 16. Section 32(3) provides that a child who has not attained the age of 5 on a school commencement date (defined in section 32(1) but generally a date fixed in August each year), is deemed for the purposes of section 31 of the 1980 Act not to have attained the age of 5 until the school commencement date (ie during August) following his or her 5th birthday.

[2] "Kinship care order" is defined by reference to section 72(1) of the Act; it means an order under section 11(1) of the Children (Scotland) Act 1995 (the 1995 Act) which give to a qualifying person the right mentioned in section 2(1)(a) of that Act (a right to have the child living with them or otherwise to regulate the child's residence); a residence order; or an order under section 11(1) of the 1995 Act (a court appointed guardian).

6. In January 2014, the then First Minister announced that early learning and childcare would be extended to around 15% of 2 year olds from August 2014 (based on receipt of out of work benefits); and to around 27% of 2 year olds from August 2015 according to the criteria for free school lunches.

7. The Specified Children Order was made on 30 June 2014 and describes the children entitled to the mandatory amount of early learning and childcare as 3 and 4 year olds; and as 2 year olds with a parent on certain qualifying benefits (out of work benefits as defined by the Department for Work and Pensions).

8. The Specified Children Order also sets out start and stop dates for this entitlement which are unaffected by this amending order except that the amendments are limited in application to children whose second birthday falls on or after 1 March 2015. Therefore, 3 and 4 year olds remain eligible from the first term after their third birthday up until when they are due to start school; and 2 year olds with a parent on out of work benefits are eligible from the first term after their second birthday or the first term after their parent starts receiving a qualifying benefit.[3] The current "qualifying benefits" are:

    - Income support;
    - Job seekers allowance (income based);
    - Employment and Support Allowance (income based);
    - Incapacity or Severe Disablement Allowance; and
    - State Pension Credit.

Additional Eligible 2 year olds

9. This Order will amend the Specified Children Order to specify additional 2 year olds who will be "eligible pre-school children" from August 2015 based on current free school lunch criteria and current specified start dates following their second birthday. Where the free school lunch criteria are met, the extended eligibility will apply to all 2 year olds whose second birthday falls on or after 1 March 2015.

10. Specifically, this Order will amend article 1(2) of the Specified Children Order to add to the definition of "qualifying benefit" so that eligibility for the mandatory amount of early learning and childcare will extend to those children (who turned 2 on or after 1 March 2015 and) who have a parent in receipt of:

    - Child Tax Credit based on an annual income not exceeding the income threshold determined for the purposes of section 7(1)(a) of the Tax Credits Act 2002 (currently £16,105); and not in receipt of working tax credit (defined in sections 10 to 12 of the 2002 Act) unless:-
        (i) the award of working tax credit is based on an annual income not exceeding the income threshold for working tax credit determined for the purposes of section 7(1)(a) of the 2002 Act (currently £6420); or

[3] The approach to defining the start and stop dates for the entitlement to the mandatory amount of early learning and childcare is explained in more detail in the Policy Note to the Specified Children Order, available at: http://www.legislation.gov.uk/ssi/2014/196/policy-note/contents.

(ii) the parent is entitled to the award of working tax credit by virtue of being treated as engaged in qualifying remunerative work[4] under the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002; or

- Support under Part VI of the Immigration and Asylum Act 1999; or
- Universal Credit.

11. This extension of the definition of "qualifying benefit" is intended to accord with the criteria for free school lunches under the Education (School Lunches) (Scotland) Regulation 2009 but the Order itself does not specify the current threshold levels because these are subject to change. Income threshold levels are set by the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002 (S.I. 2002/2008); and, are updated through the Tax Credits Up-rating Regulations.

12. Universal Credit is included as an interim measure to ensure that no child is disadvantaged during the roll out of Universal Credit. Following full roll out of Universal Credit, the free school lunch criteria will be redefined and the Specified Children Order will be amended accordingly.

13. Other free school lunch criteria under section 53(3)(a)(iii) of the Education (Scotland) Act 1980 are already covered under the Specified Children Order, specifically children with parents or carers in receipt of;

    - Income Support;
    - Income based Job Seekers Allowance; and
    - Income based Employment and Support Allowance.

14. The amendments to the Specified Children Order made by this Order will come into force on 1 August 2015.

Consultation and Impact Assessments including Equality Implications

15. The Act was designed to enable expansion to wider cohorts of children; and, there is wide consensus around the desire to expand the entitlement to more vulnerable and disadvantaged 2 year olds, as evidenced through the passage of the Act.

16. Following the announcement in January 2014 to extend the entitlement to the mandatory amount of early learning and childcare from August 2015 to 2 year olds eligible under the Free School Lunch criteria, there has been on-going engagement and consultation with key stakeholders and delivery partners to ensure that implementation of this ambitious commitment is sustainable, manageable and affordable whilst remaining high quality.

[4] A person is entitled to working tax credit under regulation 7D of the 2002 Regulations during the 4 week period immediately after (a) his or her employment ceases; or (b) he or she starts to work less than 16 hours per week.

17. Local authorities were provided with estimated numbers of eligible 2 year olds in each local authority area in November 2014 to enable them to begin planning and preparation. Capital and revenue costs have also been agreed with COSLA including distribution and allocation across local authorities.

18. There has been on-going engagement with COSLA, local authorities and local authority networks including Association of Directors of Education (ADES), National Early Years Local Authority Forum (NEYLAF), and the National Early Years and Childcare Officers Group (NEYCOG); and, other key delivery partners.

19. A marketing programme to promote this entitlement to parents will be rolled out in June 2014 following Parliamentary approval and making of the Order by the Scottish Ministers.

20. A wider range of stakeholders and delivery partners will be consulted on updated statutory guidance to reflect the new cohort of 2 year olds eligible for the mandatory amount of early learning and childcare from August 2015.

21. A full EQIA was completed as part of the Act, when introduced to the Scottish Parliament. This Order, which will increase eligible 2 year olds to around 27% of 2 year olds in Scotland, is not considered to be discriminatory on the basis of age, disability, race, religion or belief, sex, sexual orientation or gender reassignment; and, there should be no group adversely affected by this Order. Young children from more vulnerable or disadvantaged backgrounds are set to benefit; and, there are benefits for parents, particularly women, in terms of removing barriers to work, training or study.

Financial Implications

22. Additional funding of £44 million revenue and £39 million capital has been agreed with COSLA for the purpose of implementing this Order.

Scottish Government
Early Years Division
April 2015